DRN-5256076

The complaint

Mrs M complains that Protection and Investment Ltd (PIL) provided unsuitable advice and poor service for her ISA (Individual Savings Account) and pension causing her financial loss.

What happened

Mrs M is represented by her husband, Mr M, in bringing the complaint. To some extent, and for ease of reading, I've referred to what's been said on Mrs M's behalf as if she's made those comments herself.

Mrs M became a client of PIL in about 2016. She was introduced by her husband who'd been PIL's client since 2007. Mrs M set up an ISA in 2016 and transferred an existing pension plan to the same provider as the ISA was with. In 2018 she had a problem with withdrawing funds from her ISA. She says PIL's adviser caused delays which meant she suffered a financial loss. In August 2023 Mrs M received information from her pension provider which showed that, over the previous three months, the value had fallen significantly. On 26 August 2023 Mrs M instructed that her pension fund be switched to cash. She began to look for a new adviser and found out that, of the five funds she was invested in, four were medium-high risk.

On 12 September 2023 Mr M complained to PIL. He said the complaint was being made on behalf of him and Mrs M, who he'd introduced to PIL's adviser who'd said he wouldn't normally have taken on Mrs M as a client as the value of her assets wasn't enough. It was only because she was Mr M's partner that the adviser was willing to act for her. But she hadn't felt valued as a client or listened to, nor had the adviser answered her questions or explained things in a way she could understand. Mr M said as things had turned out the adviser hadn't listened to either of them. Mr M said he'd continually made it clear to the adviser that he was a cautious investor, even when under some pressure from the adviser to take greater risks. And his wife had also made it clear that she was a low risk investor.

Finding out that their funds had fallen in value came as an enormous shock and they didn't know how, as cautious investors, such losses could be suffered. To preserve what they had and to take stock they'd instructed their pension funds to be switched to cash. They'd then sought new advice and found out she hadn't been invested cautiously. Various emails were cited, showing they were cautious investors. Mr M had been forced to push his planned retirement date back. There'd been a problem in 2018 when withdrawing funds from her ISA. The adviser's service had deteriorated over the years and he'd admitted he had too many clients.

PIL acknowledged the complaint by letter dated 20 September 2023. The letter was addressed to Mr M but the salutation read Mrs M. PIL said, if Mr M wanted to make a complaint on behalf of his wife and represent her, PIL needed her authority. PIL set out its understanding of the complaint and said it would investigate and respond.

Mr M replied on 5 October 2023, pointing out PIL's error in addressing him as Mrs M and adding some further points. He enclosed Mrs M's signed authority to allow him to deal with her complaint.

PIL sent its final response letter on 23 October 2023. PIL didn't uphold the complaint. PIL said Mrs M had a high capacity for loss as she had an unencumbered property and significant funds. Her pension had increased in value. The total amount paid in was £50,841.03 and the value as at 26 August 2023 was £52,169.29. If Mrs M's funds had been invested more cautiously, she'd be worse off due to falls in the value of fixed interest funds and corporate bonds. PIL didn't agree the adviser's service had been lacking.

Mrs M was unhappy with PIL's response. There were further exchanges but matters weren't resolved and the complaint was referred to us.

One of our investigators looked into what had happened. He issued his view on 18 November 2024. He didn't uphold the complaint. Mrs M disagreed with the investigator's findings so the complaint has been referred to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where, as here, what's happened isn't agreed, I reach my conclusions on the balance of probabilities, that is what I consider is likely to have been the case, taking into account all the evidence (some of which might be incomplete, inconclusive, contradictory or disputed) and the wider circumstances. The weight I might place on particular evidence is a matter for my judgement. And, although I've only summarised Mrs M's complaint above, I've read and considered everything she (and PIL) have said. But I'm not going to comment on every point that's been made. Instead I've concentrated on what I see as the key issues which I've dealt with under the headings below. I'm in broad agreement with the investigator's views and I agree with the outcome he reached.

As mentioned above, Mr M has made a similar complaint to Mrs M. His complaint has been dealt with under separate reference. But, as the main complaint issues are the same, my decisions are correspondingly similar.

Mrs M's attitude to investment risk (ATR)

Mrs M's central complaint is that the fund recommendations were unsuitable as they didn't match her cautious ATR. There'd been a meeting with the adviser in May 2023 and no issues were raised. Things seem to have come to a head when Mrs M received the adviser's letter of 23 August 2023. Mrs M says the letter didn't include all the information she'd requested – up to date valuations were enclosed but not historical information showing by how much the funds had fallen.

Mrs M suggests the letter was sent by post rather than emailed and timed to arrive over a Bank Holiday weekend which meant she was unable to get in touch with the adviser immediately. I'm not sure what the adviser could hope to gain by delaying any conversation by a few days. It could be that it was easier to send the information by post, rather than attached to an email. And earlier review documents seem to have been sent by post. The adviser did say that overall values had fallen since February 2023. Valuations had been sent with the adviser's letter of 21 February 2023 which Mrs M could've compared with the later valuations although, coincidentally, she received statements from the provider a day or so after the adviser's letter which made things – and the extent of the falls in value – clear.

I don't underestimate how shocked and upset Mrs M was when she saw her funds had fallen in value. I note what PIL has said about Mrs M's capacity for loss. But, even her position was

such that she could afford to take a higher degree of risk, that doesn't mean she wanted to and was comfortable in doing so. She clearly regards herself as a cautious investor and she says that's always been her position. But it seems that wasn't the adviser's understanding. I've looked at what the adviser reasonably thought had been agreed as to how much risk Mrs M was prepared to take.

Fact find dated 21 September 2016: It records that Mrs M (then Mrs W) was 52, in very good health, had one dependant, was self employed earing £15,000 pa and expected to retire at age 68. Out of six options risk level 5 (Moderate to Adventurous) had been ticked. Her objectives were to '*build up her pension pot*' and '*invest a lump sum of £10,000'*. The additional notes made on the fact find by the adviser say: '*This money is important to* [Mrs M] *but as she is a number of years away from retirement so we have agreed that a reasonably high level of risk is appropriate.*' Mrs M and the adviser signed the fact find on 21 September 2016.

Letter dated 28 September 2016: This confirms what was discussed at the meeting and the recommendation to set up a new ISA. It said she'd selected option 5 from the ATR options. And it went on to say that taking into account Mrs M's ATR it had been agreed that the money was invested mainly in higher risk equity funds.

Letter dated 3 January 2017: It's referred to as an addendum to the previous letters dated 28 September and 9 December 2016 – I don't think we've seen the latter) and concerns the transfer of an existing pension plan held by Mrs M to a new provider. Amongst other things the letter said Mrs M's ATR was unchanged since her ISA had been set up in September 2016 when she'd selected option 5 – moderate to adventurous. The letter said the transfer payment would be held in cash pending agreeing a fund strategy once the plan had been fully set up. But Mrs M's ongoing regular contributions (£125 net pm) would be invested in the Woodford Equity Fund. Mrs M signed the letter to confirm she accepted the advice.

Going forwards, the adviser conducted two reviews a year, one in February and an interim review in August. The letters sent to Mr and Mrs M in February each year enclosed up to date valuations, a charges disclosure form and a suitability document. The latter appears to have been routinely sent – the adviser's letters of 11 February 2020, 4 February 2021, 19 February 2022 and 21 February 2023 all refer to it. So Mr and Mrs M should've received it several times. If it wasn't enclosed then I'd have thought they'd have queried that.

Client meeting report dated 2 May 2023: It says the clients are Mr and Mrs M and refers to a meeting at their home having taken place on that date. The documentation completed at the meeting includes an Attitude to Investment Risk document. It sets out six risk statements (from 1 – Minimal Risk – to 6 Adventurous. Number 5 – Moderate to Adventurous – has been ticked for both Mr and Mrs M. The accompanying statement refers to taking a medium degree of risk in return for the prospect of improving longer term performance. And, further down, high capacity for loss has been ticked – described as '*You can afford to take the risks associated with your chosen* [ATR] *and can withstand any underperformance.*' The adviser has added notes to say that Mr and Mrs M have no debt and are both working and so have a higher capacity for loss. Mr M, Mrs M and the adviser signed the client declaration on the next page. The date and time is shown as 7pm on 2 May 2023.

I really don't want Mrs M to feel that, in looking beyond what Mr M has said (on behalf of himself and Mrs M) that his integrity is being questioned. But it won't usually be fair to accept what one party says about what happened if that's disputed without examining the other available evidence, such as PIL's records – even though Mr M says what PIL has recorded isn't accurate. Indeed he's referred to fraud by false representation, a criminal offence under the Fraud Act 2006. On that issue, we're an informal dispute resolution service and an alleged criminal offence isn't directly part of our remit. On balance, it's difficult to ignore a

considerable amount of contemporaneous documentation, some of which Mrs M has signed. I don't overlook what's been said about the adviser sending blank forms for signature on the premise he'd forgotten to get them signed at meetings. But it's difficult to see that Mrs M would've been prepared to routinely sign blank forms. And there are also the letters I've referred to above which were sent to Mr and Mrs M which set out the adviser's understanding of their ATR.

Email commentary

Mr M, on behalf of himself and Mrs M, has pointed to a number of emails which he says evidence that they were cautious investors. I bear in mind that it's not always helpful to look at selected emails in isolation – they may reflect adjustments to accommodate changing market conditions, perhaps arising from global events such as Covid or Brexit and resulting market uncertainty, rather than more properly reflecting an investor's overall investment strategy. I've considered the emails referred to. But, as my comments reflect, I'm not persuaded that the emails demonstrate a low/cautious ATR should've been recorded for Mr and Mrs M.

Mr M's email of 7 September 2018: The adviser had emailed on 22 August 2018 about the closure of two funds and had recommended switching the proceeds into the provider's deposit fund. The adviser's support team emailed Mr M on 7 September 2018 asking him to confirm he was happy with that recommendation so the switch could be processed. Mr M said he'd replied to the adviser with a note. The support team replied to confirm that the adviser had seen the note and confirmed that fund was low risk and so the switch authority had been submitted.

As discussed further below, an investor's pension or ISA portfolio will generally be made up of a mix of assets aimed at meeting the investor's objectives and circumstances and in line with their ATR. For a medium risk investor I'd expect to see a diversified portfolio comprised of different asset classes with lower and higher risk funds. The fund switch appears to have come about as a result of the closure of two funds and the adviser's recommendations are referred to as being '*at the present time'*. Sometimes, particularly if market conditions are uncertain, a fund may be selected as an immediate home, pending a more longer term decision as to how to invest.

Mr M's email of 19 September 2018: Mr M says this email doesn't look like it's been sent by a high risk investor. I note Mr M's concerns as to performance generally and I can understand his concern that his fund vale had fallen by almost £1,000 in a matter of weeks. But an investor who is prepared to accept risk may still voice concerns about falls in value.

Email exchange on 20 September 2018: This concerns a life assurance bond which Mr M intended to encash in part early the following year and so didn't want the value to fall. Mr M said he was concerned about Brexit and needed the money to be in as safe as possible a fund and if that was the provider's deposit fund then the money should be moved there. The adviser responded to say that the deposit fund was the safest fund available within the bond fund range but wasn't zero risk. I think this demonstrates issues I've mentioned elsewhere in this decision – about when encashment is planned to meet a need for the money and when the priority may be to preserve the value and particularly if there's a perceived threat – such as Brexit.

Mr M's email to the adviser dated 3 October 2018: This further demonstrates Mr M's concerns about Brexit. He refers to all his funds having been put into reasonably safe options. The adviser replied the same day saying he and Mr M needed to meet or at least have a lengthy telephone conversation to establish exactly what Mr M wanted to do at that time. The adviser said the bond was now invested in the deposit fund and so its value

shouldn't change much. He went on to say that the main question was now whether Mr M also wished to reduce risk for his pension and ISA and if so what he meant by '*reasonably safe options*' and which could cover anything from cash to cautious managed funds. What I think the email shows is that the adviser was responsive and receptive to concerns expressed by Mr M about the degree of risk he was comfortable with taking. Mr M's response was to say that he was going to wait until after Brexit as he didn't feel there was any point in trying to second guess the market and he'd decided to wait to see the adviser until at least April the following year.

Emails on 25 February 2019: These centre on the Woodford fund which Mr M wanted to exit. Unhappiness with a particular fund leading to a request to disinvest and place money in cash pending a decision as to reinvesting is a fairly standard process and again doesn't necessarily indicate a change in ATR overall. I note the adviser suggested a meeting as soon as possible '*to decide a future strategy to consider placing all your money in a risk adjusted fund within your risk tolerance as the current approach didn't seem right for you.*' I think that again shows the adviser had picked up on an indication from Mr M that he may not have been comfortable with the current investment strategy and was something that might need to be explored further.

The adviser's email of 27 February 2020: It followed a meeting the day before with Mr M and his wife. It's clear that Covid had been discussed – the first lockdown was announced just under a month later – and the differences in opinion amongst market analysts as to what was going to happen and the likely resulting effects on the financial markets, particularly if it was the start of a global pandemic. The email records that it had been agreed '*to move some of your cash and also some of the higher risk funds but to still take a relatively cautious approach going forwards.*' The adviser went on to recommend selling some funds and reinvesting in two multi asset funds and two bonds. So, at that stage, Mr M's portfolio was derisked to some degree and in response to the Covid threat. Again that shows the adviser was listening to what Mr M was saying. The email has to be read in context and, on its own, doesn't demonstrate a cautious ATR. I think it's an example of what I've referred to above where prevailing global events and market uncertainty have to be taken into account when making investment decisions, even if the outcome and impact on the financial markets can't be predicted with certainty.

PIL's email of 18 March 2021: It followed a lengthy conversation a couple of days earlier and recorded what had been agreed – that the year before Mr M had instructed most of his holdings be switched to cash as he was concerned about the economic effects of Covid and a hard Brexit but he now felt those threats were hopefully over and he'd like to move into 75% higher risk (shares) and 25% lower risk assets across both his ISA and pension. Fund recommendations were set out which Mr M accepted the same day. The email seems fairly clear in saying that Mr M would be taking a higher degree of risk with 75% of his funds balanced by 25% in lower risk assets and what that would mean in money terms based on the current values for his pension and ISA. And sets out the fund purchases needed to achieve that. So I don't think it evidences a cautious or low risk approach.

Mr M's email of 30 January 2023: It refers to making a pension contribution of £6,700 for that tax year. Mr M expresses concern over the economic climate and pessimistic media commentary and asks if it's a good idea to invest or keep the money somewhere safe until market conditions improve. That could be interpreted as someone who is usually prepared to invest but temporarily uncertain due to the prevailing economic climate.

Email trail in July 2023: Mr M says his reaction to the losses isn't that of someone who can afford to lose money as someone who isn't cautious would be prepared to. But falls in fund values can focus an investor's mind and may prompt a rethink as to the degree of risk they are really comfortable in taking.

Make up of Mrs M's funds

I've also looked at how Mrs M's funds were made up. I note what's been said about not checking the funds that were recommended were in line with her cautious ATR. I think an investor is entitled to expect that fund recommendations made by an adviser would match the investor's ATR. But here the adviser wasn't proceeding on the basis that Mrs M was a cautious investor – the adviser accepts that, if Mrs M had been a low risk investor, he wouldn't have advised her to invest as he did. And, although a portfolio's performance may have been disappointing, that won't, of itself, mean that an adviser had done anything wrong. I'd agree that investment conditions in recent years have been difficult.

I haven't seen any evidence to suggest that the adviser tried to put any pressure on Mrs M to adopt a higher ATR than Mrs M had indicated she was comfortable with. I don't overlook that an investor who is closer to retirement will often want (or be advised) to reduce risk to avoid the value of investments falling just before there's a need to access retirement savings. But that won't invariably be the case and sometimes there's a need to try to generate further growth to be able to maintain living standards or ensure that inflation doesn't erode spending power.

It isn't possible to conduct a full audit of Mrs M's investments throughout her time as PIL's client. I don't disagree with the sample approach the investigator took, focusing on the February 2019 and February 2023 pension statements. The earlier statement indicates about 38% in high risk investments, 16% in medium risk and the remaining 46% in low or very low risk investments or cash which isn't out of line with a medium (or slightly higher) ATR with 62% of the investments being medium to low risk. The later 2023 statement also indicates a medium (or slightly higher) risk approach – 43% in higher risk, 26% in medium risk and 31% in lower risk funds or cash – so 57% in medium and low risk funds.

As to falls in value, if an investor is invested cautiously, significant falls in value might not be expected and might indicate that the investments are out with the investor's ATR. Although that said, a portfolio for a cautious investor might be weighted towards bonds, the prices of which have fallen sharply in recent years due to rises in interest rates, with some low risk investors experiencing significant losses. But here I don't agree that the adviser understood that Mrs M was a cautious investor. So the adviser's recommendations weren't on that basis.

And generally, in looking at if an investor has suffered a financial loss, we'd look at how a portfolio has performed over a period of time. Fund values fluctuate so we wouldn't usually simply pinpoint a higher value at a given time and say any fall in value going forwards could properly be termed a loss. So I don't agree that because, when Mrs M switched her pension fund to cash in August 2023 the value was less than it had previously been, that must mean she's suffered a financial loss. A decision to encash will however crystallise the actual value recovered.

Mrs M is unhappy that the adviser hadn't contacted her about the falling values and suggested, as interest rates were rising, it might be prudent to switch to a guaranteed return type fund. But there'd been a meeting on 2 May 2023 and between then and early July 2023 I don't think there was anything significant in the financial markets that should've prompted the adviser to contact Mrs M. I don't think it's reasonable to expect) for the adviser (and this isn't any reflection of how many clients he may have had) to monitor Mrs M's investments that closely.

The adviser's '*Cash is king*' remark in his letter of 23 August 2023 strikes me as somewhat unfortunate and may have (albeit I think unintentionally) caused Mrs M some upset. Where switches to cash have been considered but rejected in favour of remaining invested and

market performance has then remained disappointing, resulting in further falls in values, the decision not to switch to cash might appear to have been wrong. But, equally, encashing at the bottom of the market, although an understandable reaction to losses and a desire to avoid further losses, may mean missing out on any recovery in values. What the 'right' choice was can only be seen with hindsight. And I think that's what the adviser meant in his letter and in saying that the hoped for recovery hadn't materialised.

ISA encashment in August 2018

PIL advised Mrs M to set up an ISA in September 2016. In August 2018 Mrs M instructed the encashment of the ISA. In his email of 7 August 2018 PIL's adviser said that would generate a 'small' loss and offered some explanation – including that he understood that, when the ISA was set up, the intention was for longer term capital growth, otherwise he wouldn't have recommended the funds selected. He asked Mrs M to confirm that she did wish to close the ISA and for details of the account into which the money should be paid. Mrs M replied saying she did want to withdraw all the funds. She said it had always been her intention to invest much longer term but there'd been a change in her personal circumstances. The adviser replied saying he felt bad that things hadn't worked out better from a fund performance perspective. Mrs M replied saying she'd taken the risk, knowing that investments can go down in value.

I haven't seen anything to suggest there was any delay or error on the adviser's part in acting on Mrs M's instructions. The encashment did generate a loss of £765. But I can't see that PIL's adviser was responsible for that. And Mrs M's email suggests, at least at the time, that was her view too.

Level of service generally

Mrs M signed a client agreement on 21 September 2016 which set out the services she'd get and the charges. There were 4 levels of ongoing service and what each comprised was set out. Mrs M would receive the *'ongoing service level 3'* for a 0.75% ongoing charge which included:

'*Annual valuation statement and review of plans. Recommendation and implementation of changes to funds where required. Ad-hoc support in relation to the plans arranged, we are available over the phone, by email or by post.'*

The fees and charges schedule sent to Mr and Mrs M in February each year also said, under the '*Ongoing adviser charge*' heading '*You opted into our Level 3 ongoing service*' and repeated what that included as set out in the client agreement.

I think PIL provided those services and to a reasonable standard. PIL undertook an annual review in February each year and an interim review in August each year – which appears to be over and above the annual valuation and review stipulated. And, from what I've seen, PIL responded to ad hoc queries.

Mrs M suggests that no review was undertaken in 2022. I'm not sure if that means there was no meeting. But it won't always be necessary to have a face to face or online meeting. I've seen the adviser wrote to Mrs M on 16 February 2022 and on 9 August 2022. Both times the adviser offered a meeting or a telephone/Zoom call.

Mrs M's position is that the level of service she received from the adviser deteriorated over the years and he admitted he had too many clients – which the adviser denies. But, overall, from what I've seen, I think the service Mrs M received was in line with what PIL had agreed to provide and of an acceptable standard. Mrs M also says she was made to feel that she

wasn't valued as a client. The adviser denies that but has apologised if Mrs M felt that way. There were some instances of inattention but, in my view, these were relatively small and such that would almost inevitably arise in a relationship spanning several years. For example, there were times when the adviser wasn't in the office and didn't set his out of office message. That would've better managed expectations but there may be times when it's overlooked. And the adviser seems to have responded promptly when he did pick up the messages and his replies to emails overall appears to have been prompt.

As to how PIL dealt with the complaint, PIL's letter acknowledging the complaint was addressed to Mr M but the salutation read Mrs M. I haven't seen that PIL apologised for that. There was also a mistake about a compensation payment made to Mr M (by a provider, not PIL). I don't think those mistakes went to the substance of the matter but any errors, however small, are likely to undermine confidence and credibility in what's being said. Of perhaps more significance is Mr and Mrs M's disappointment, given they were longstanding clients (Mr M had been a client since 2007 and Mrs M since 2016), that PIL wasn't prepared to apologise or engage to try to work out a resolution. But PIL didn't think the complaints were justified and so PIL's responses were framed accordingly.

In summary, I'm very sorry that this matter has caused so much distress. I know Mrs M will be very disappointed with what I've said. However, the nature of our work is such that one party is likely to be disappointed with the outcome. I can only uphold the complaint and award redress if I'm satisfied that PIL did something wrong (or didn't do something it should've) and which has caused financial loss and/or distress and inconvenience. I hope I've explained why I'm unable to say that was the case here.

My final decision

I'm not upholding the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 8 May 2025.

Lesley Stead
Ombudsman